prior to Order 58 rule 15 being amended, mistake of counsel was not accepted by the Court of Appeal as a special ground for extending the time in which to appeal — see, for instance, the case of *In re Coles & Ravenshear*[2]. But after that rule was amended, mistake by the legal adviser of an appellant may be accepted as proper ground for extending the time, though whether it will be accepted depends on the facts of the particular case.

In the case before this Court there was no mistake either by the appellant's legal adviser or by the appellant himself.

First, the appellant took the risk of not instructing his legal adviser to file the memorandum of appeal until an order for stay had been made. Having done that deliberately he cannot now be heard to say that he should have an extension of time in which to file an appeal because the order for stay was not made until after the time for filing his memorandum of appeal had expired. He could have filed his memorandum of appeal whilst the application for stay of execution was pending.

Secondly, his legal adviser, who was well aware of the new procedure in Regulation 18(2) of the Emergency (Criminal Trials) Regulations, 1948, should have applied to the Registrar, Supreme Court, for the application for stay to be heard promptly immediately those Regulations came into force. He ought not to have taken the risk of waiting and trusting to obtaining an order for extension on this Motion before the Court of Appeal.

Thirdly, I should have been inclined to view this application with more sympathy, if, as soon as the order for stay had been made, the memorandum of appeal had been presented for filing. This was not done.

Hence, I cannot see on these facts, that the case of *Gratti v. Shoosmith*[1], *supra,* relied on by the appellant, is in point, because in that case there was a genuine mistake, which is not so in this case; also, in that case the attempt to enter the appeal was only eight days out of time, whereas in this case the memorandum of appeal is five weeks and two days out of time.

Accordingly I do not find that sufficient grounds have been shown for extending the time, and the Motion must be dismissed with costs. The only appropriate consequential order to make under sub-rule 13 of 1935 Rule No. 1 regarding the appeal is that it is dismissed with costs.

Motion dismissed.

TAN AH CHEE & ANOR. v. REX

[A. Cr. J. (Gordon Smith Ag. C.J.) October 14, 1948]

[Singapore — Magistrate's Appeal No. 105 of 1948]

Penal Code, ss. 441 and 451 — Criminal trespass — Proof of.

In this case the accused were found sleeping on a ship in the harbour. It appeared that they were coolies employed to carry goods and that they had fallen asleep after finishing their business and were waiting for their sampans. They were convicted under s. 451 of the Penal Code for criminal trespass.

Held: that there was no evidence in this case that the accused had any intention to commit any offence and therefore in the absence of proof of criminal trespass, the accused must be discharged.

MAGISTRATE'S APPEAL.

R. S. Johnson for the appellant.

A. V. Winslow (D. P. P.) for the respondent.

Gordon Smith Ag. C.J. : — The first point for consideration, and the main point, in this appeal is whether criminal trespass had been proved.

The section under which the accused were charged, section 451, says "Whoever commits house trespass in order to the committing of an offence ..... the term of the imprisonment may be extended to seven years", and 'criminal trespass' is stated and defined in section 441 "Whoever enters into or upon property in the possession of another with intent to commit an offence ..... is said to commit 'criminal trespass' ".

It is said that there is a prohibition on hawkers from visiting or carrying anything to ships which are discharging or loading rice in the Harbour, and that fact should have been proved by producing some regulation to that effect or the master or some other officer of the ship should have been produced to show that the appellants went on board the ship and remained there against his orders and that such was unlawful. If not actual licensees, these two appellants were apparently employed by licenceholders and this appears to be a customary practice and, according to the defence, they went to the ship to carry on their business, but when arrested they were found to be asleep. The accused explained that they did so after they had finished their business and were waiting for their sampans. They were questioned by the Marine Police but the Marine Police made no proper search to ascertain whether there was any property or materials which would have been relevant to the case one way or the other, either for the prosecution or for the defence.

In the absence of any proof of criminal trespass their appeals must succeed and the appellants are discharged.

Appeals allowed.